torium Acts of New South Wales, but the principle he enunciated cannot be doubted for it is commonsense. It has been applied in Canada in *Sterling* v. *Swadron*,[4] cited by counsel for the defendant, and, referred to with approval in *Strouds* Judicial Dictionary under "Guarantee".

Next, it was submitted for the plaintiffs that the alleged contract was drawn by commercial men, without the benefit of legal advice, wherein the defendant has held himself personally liable as against being jointly liable, and therefore I must give effect to it, regardless of what one may call the document. Now, I am not sure what I am to make of this submission. But, let me say, the alleged contract is not a mercantile document, I have to construe to find the intention of the parties. It is a document in legal language. What is wrong with it is that the person who made the document has committed a legal folly of requiring the partners of AAC to give a guarantee to the plaintiffs which invalidates the document.

Finally, as I have understood it, there was an alternative to the above submission. It was that since partnership creates a joint liability, the defendant by making himself answerable for the debts of his co-partners was giving a guarantee for the debt of another person. To support the said submission, counsel referred me to *Halsbury's* Laws of England, 3rd Ed., Vol. 28. At page 511, there is the following in paragraph 987:

"If one partner promises in his own name to pay a debt of his firm he alone is liable on such promise, and he cannot raise the defence that the debt was a joint liability."

The authority for the above proposition is *Murray* v. *Somerville*,[5] a decision before the Partnership Act of 1890. In that case the defendant, in an action for money had and received, had raised the plea of abatement that it was due jointly from himself and his co-partners. Several letters from the defendant to the plaintiff were put in, which were signed by the defendant, and in which he promised to pay the money without making any mention of his partners. Lord Ellenborough held the letters conclusive evidence that the debt was due from the defendant personally, and not from the partnership.

Now, firstly, the facts of the present case differ widely from that of *Murray* v. *Somerville*. Secondly, in my view there is nothing in the statement in *Halsbury* that can support the submission made for the plaintiffs. In the case before me, the defendant and Ang Lak Nya have in the alleged contract of 9th of April 1975 contracted jointly and severally to guarantee the debt incurred by them trading in partnership as AAC which they are not competent to do. Further, in the testimonium, unlike the facts in *Murray* v. *Somerville*, the defendant has appended his signature under his firm's name, AAC. In my judgment the liability of the defendant (and of Ang Lak Nya) to the plaintiffs would be the same even if he had not executed that document.

I therefore declare that the alleged contract of 9th of April 1975 is not a guarantee, and the plaintiffs have no cause of action accruing to them from it. The plaintiffs' claim is accordingly dismissed.

Claim dismissed.

Solicitors: *Advani & Hoo; Lim & Gopalan.*

MALAYSIAN REPORTS

CHONG KOK LIM & ORS. v. YONG SU HIAN

[F.C. (Chang Min Tat, Syed Othman F.JJ. & Abdoolcader J.) October 24, 25 & 26, 1978]

[Ipoh — Federal Court Civil Appeal No. 80 of 1978]

Administrative Law — Domestic tribunal — Association — Expulsion of member by Executive Committee — Whether rules of association give power to expel — Whether adequate notice, hearing and due inquiry given — Confirmation of decision of Executive Committee by Extraordinary General Meeting — Mala fides and bias — Error of law — Defective constitution of tribunal — Damages — Exemplary damages.

Societies — Expulsion of member by Executive Committee — No adequate notice and hearing — Confirmation by Extraordinary General Meeting.

In this case the respondent had been expelled from membership of the Perak Chinese Association by a resolution of the Executive Committee which was later confirmed by an Extraordinary General Meeting on the basis of an allegation that he had used the name of the Association without authority to privately print forms of application for membership of the association. The respondent applied to the High Court to set aside his expulsion on the grounds that the resolution in question and the confirmation thereof were *ultra vires*, in breach of the rules of natural justice and made in bad faith and also claimed damages for wrongful expulsion. The learned judge declared the resolution of the Executive Committee affecting his expulsion and the confirmation thereof by the Extraordinary General Meeting void and of no effect but made no order for damages. The appellant appealed against the declaration made and the respondent cross-appealed on the question of damages.

Held: (1) the rules of the association empowered the Executive Committee to expel a member but only in accordance with the rules;

(2) in this case no adequate notice and hearing had been given and there was no due inquiry at the meeting of the Executive Committee in respect of the allegation against the respondent. In the circumstances the decision of the Executive Committee to expel the respondent could not be valid;

(3) as the decision to expel the respondent arrived by the Executive Committee was invalid, there could be no question of the Extraordinary General Meeting being able to confirm an invalid decision and in any case nothing transpired at the Extraordinary General Meeting to rectify the position or cure the initial defects in the decision of the Executive Committee;

(4) there was not only reasonable suspicion but also real likelihood of bias on the part of the first appellant in this case and his presiding at the Executive Committee meeting and at the Extraordinary General Meeting in relation to the matter of the respondent's expulsion was yet another factor vitiating the proceedings;

(5) the appellate court would not interfere with the learned judge's decision not to award damages as although his expulsion was invalid, the respondent had not suffered such damage as to merit a reversal of that decision.

Principles upon which courts will intervene in decisions of domestic tribunals in relation to the power of expulsion of a member stated.

Cases referred to:-

(1) *Weinberger* v. *Inglis* [1919] A.C. 606, 626.

(2) *Young* v. *Ladies' Imperial Club Limited* [1920] 2 K.B. 523.

(3) *Hopkinson* v. *Marquis of Exeter* (1867-8) L.R. 5 Eq. C.

(4) *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.* [1978] 1 M.L.J. 75.

(5) *Dawkins* v. *Antrobus* (1881) 17 Ch. D. 615.

(6) *MacLean* v. *The Workers Union* [1929] 1 Ch. 602.

(7) *Lee* v. *The Showmen's Guild of Great Britain* [1952] 2 K.B. 329, 341-347.

(8) *Andrews* v. *Mitchell* [1905] A.C. 78.

(9) *Abbott* v. *Sullivan* [1952] 1 K.B. 189.

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(10) *Arman* v. *Government of Ghana* [1968] A.C. 192, 257.
(11) *Parvis Faridian* v. *Medical Council* [1971] A.C. 905. 1001.
(12) *Felix* v. *General Dental Council* [1960] A.C. 707, 717.
(13) *Walter Annamunthodo* v. *Oilfield Workers Trade Union* [1961] A.C. 945, 956.
(14) *Labouchere* v. *Earl of Wharncliffe* (1879) 13 Ch. D. 346.
(15) *John* v. *Rees* [1970] 1 Ch. 345.
(16) *Vasudevan Pillai* v. *City Council of Singapore* [1968] 1 W.L.R. 1278, 1286.
(17) *Leary* v. *National Union of Vehicle Builders* [1971] 1 Ch. 34.
(18) *Stringer* v. *Minister of Housing and Local Government* [1970] 1 W.L.R. 1281, 1292-1293.
(19) *Congreve* v. *Home Office* [1976] Q.B. 629.
(20) *Regina* v. *Secretary of State for the Environment Ex parte Ostler* [1977] 1 Q.B. 122.
(21) *Thompson* v. *New South Wales Branch of the British Medical Association* [1924] A.C. 764, 780.
(22) *R.* v. *Rand* (1866) L.R. 1 Q.B. 230, 232.
(23) *Hiles* v. *Amalgamated Society of Woodworkers* [1968] Ch. 440.
(24) *Taylor* v. *National Union of Seamen* [1967] 1 W.L.R. 532.
(25) *Dickason* v. *Edwards* (1910) 10 C.L.R. 243.
(26) *Stollery* v. *The Greyhound Racing Control Board* (1972) 128 C.L.R. 509.
(27) *Roebuck* v. *National Union of Mineworkers (Yorkshire Area)* [1977] I.C.R. 573.
(28) *Roebuck* v. *National Union of Mineworkers (Yorkshire Area) (No. 2)* [1978] I.C.R. 676.
(29) *Metropolitan Properties Co. (F.G.C.)* v. *Lannon* [1969] 1 Q.B. 577.
(30) *Rookes* v. *Barnard* [1964] A.C. 1129, 1226-1227.
(31) *Broome* v. *Cassell & Co. Ltd.* [1972] A.C. 1027.

HIGH COURT.

Chin Fook Yen for the plaintiff.

Dato Sri V. Jeyaratnam (*Dato Sheikh Abdul Rahman* with him) for the defendants.

Cur. Adv. Vult.

Hashim Yeop A. Sani J.: This suit was brought about by the plaintiff, an executive committee member of the Perak Chinese Association (hereinafter referred to as the "P.C.A."), against the three defendants being the president, the secretary and a committee member of the Executive Committee of the P.C.A. respectively. The three defendants are sued on their own behalf and on behalf of all the other members of the Executive Committee except the plaintiff who was expelled from membership of the P.C.A. on April 5, 1976. It is the expulsion that is the subject matter of this suit.

The expulsion by the Executive Committee was purported to have been made in accordance with Article 29(ii) of the Constitution of the P.C.A. In the amended statement of claim the plaintiff has added that the Executive Committee in so passing the resolution (to expel him) had not acted in good faith.

The plaintiff therefore prays for a declaration that the resolution passed by the Executive Committee of the P.C.A. on April 5, 1976 and its subsequent confirmation by the Extraordinary General Meeting on May 30, 1976 is null and void. The plaintiff is also asking for damages, costs and other reliefs as the court may deem fit.

Before the commencement of the trial the plaintiff succeeded in obtaining an injunction to restrain, until the termination of the present proceeding, the Executive Committee and every member thereof and any officer, servant or agent of the said committee from enforcing the resolution the Executive Committee passed on April 5, 1976 and its subsequent confirmation by the Extraordinary General Meeting on May 30, 1976 and that they also be restrained from interfering with the plaintiff in his enjoyment of the privileges, use and benefit of the P.C.A. as a member or in attending any meeting of the Association or Committee thereof.

In the statement of defence of the first, second and third defendants, the resolution by the Executive Committee on April 5, 1976 was admitted but they contend that by virtue of Article 29(ii) of the Constitution of the P.C.A. the membership of the plaintiff had been terminated and therefore the plaintiff had no further right to any of the privileges of the P.C.A. as a member. The defendants also contend that more than sufficient evidence was made available to the Executive Committee to warrant and justify the action taken on April 5, 1976 and that this resolution was confirmed or ratified by the Extraordinary General Meeting held on May 30, 1976 at which meeting the plaintiff was also present. The defendants therefore contend that the resolution passed on April 5, 1976 as well as the resolution of confirmation passed by the Extraordinary General Meeting on May 30, 1976 were lawful and that there had been no breach of natural justice in either case. In both these meetings the plaintiff was present and views for and against him were heard. Both decisions were by majority votes. According to them the claim by the plaintiff should therefore be dismissed with costs.

A brief background of the events which took place which led to the resolution passed by the Executive Committee on April 5, 1976 is necessary. The plaintiff was and is a miner and a businessman and has long been a life member of the P.C.A. He was elected as an Executive Committee member for period 1973-1974 and subsequently elected for period 1975-1976 during which period the said expulsion took place. According to his evidence there are two groups in the P.C.A., one group being the "reformist group" led by him and the other the "conservative group" consisting of the defendants and others. The reformist group, he admitted, is in the minority. Despite denials of any groupings or cliques in the P.C.A. by all the defendants (for they contended there were only differences of opinion) I am more inclined to believe the plaintiff on this point. The plaintiff gave a clear picture of the objectives of the reformist group among which was to get people from the "neutral group" which simply meant those not on either side, who are knowledgeable, capable and willing to serve the society in the committee of the P.C.A. Secondly, he said he also wanted to get some of the members of the reformist group into the committee to "supervise" the work of the P.C.A. All in all, he said the main objective of this group was to improve the functions of the P.C.A. so that the P.C.A. can actively lead the Chinese community in the State in various fields. He condescended that there are people who misunder-

stood the intention of the reformist group in that they were out to topple those people in power but he said this was not true for they were always, in any case, in the minority in the Executive Committee of the P.C.A.

Going through the evidence I am inclined to conclude that the plaintiff is a man of fixed and rigid principles and also a man of tremendous courage to speak out his mind whenever he feels that something is not right. This is so despite what DW2 (Dato Ng Song Choon) said that the plaintiff is not a frank or outspoken person. In the plaintiff's own evidence he cited an example where there was a misunderstanding with the State Government about the erection of an arch to be erected by the Chinese Guilds to celebrate National Day. However, the design of the arch was not approved by the Municipality and as a result the arch was not put up. This led to the suggestion to boycott the National Day Celebrations which of course caused much concern amongst the conservative group as that would obviously cause embarrassment with the government in power in the State.

There is also evidence that the plaintiff always raised questions about the efficiency of the P.C.A. Secretariat and it is admitted that the Secretariat was not really that efficient and the plaintiff himself was elected as a member of the sub-committee (Yong Cheng Moh, PW7, the Chairman) to suggest reforms to improve the work of the Secretariat. On this issue alone a number of altercations occurred between the plaintiff and the then Executive Secretary, Soo How Yin, and others during some of the meetings of the Executive Committee.

Yet another incident showing the character of the plaintiff was his question as to pledges of donations made by some committee members and whether or not these donations had been paid as pledged knowing very well that at that time the first defendant had also made such a pledge. According to the plaintiff the first defendant was annoyed about this question. There were other minor matters which normally would not be taken up as issues of importance at any Executive Committee meetings of any association but in this case were taken up by the plaintiff as issues which he thought required rectification. One such example was the case of the absence of the Chairman from meetings when he went abroad without leave. The other was the practice of the Chairman sending his representative to attend sub-committee meetings on his behalf. The questions of the efficiency of the Secretariat of the P.C.A., the pledges for donations and the propriety of the Chairman to send his personal representative to attend meetings and to manage the affairs of the Association were raised during the Executive Committee Meeting of the P.C.A. on December 19, 1975. As a result of that meeting it was resolved that the Chairman may send his personal representative to attend meetings but that person should have no voting right. The conduct of the plaintiff during these meetings was such that even to his own witness he was always "fault-finding."

Another important meeting of the Executive Committee of the P.C.A. relevant to this case was held on February 12, 1976. During that meeting a number of proposals were put up by the plaintiff, namely, (1) How to launch a membership drive so as to strengthen the Association, (2) Can the Chairman as well as the Secretary conduct or participate in the management of the Secretariat, (3) Should the Chairman ask for leave whenever he leaves the country and (4) Whether or not to cable the new Prime Minister in support of his appointment. The first proposal has a bearing on the subsequent events that led to the present suit. Subsequent to these proposals there was apparently a heated debate between members of the Executive Committee and in particular altercations between the plaintiff and one Wong Peng Chow. It was at this meeting that the Executive Committee, after a lengthy discussion and altercations, passed the resolution that "Hereafter any proposal from Yong Su Hian be it oral or written *if it infringes the Constitution or a resolution* shall not be tabled for discussion." The words italicized were contended by the plaintiff and his witnesses to have been included surreptitiously by the P.C.A. Secretariat as these words were never used at the meeting. I find conflicting evidence on this. But strangely enough no one raised this point at any of the subsequent committee meetings of the P.C.A. Therefore I have to conclude that some sort of discussion to that effect must have taken place at the meeting. According to the evidence of the plaintiff it was at this meeting that the Executive Committee members "ganged up" against him and since they were in the majority "they did what they liked", he said. According to him the first defendant appeared furious about the plaintiff's various questions, for example, about sending a cable to the new Prime Minister, since he as the president had taken upon himself to send a cable to the new Prime Minister from Hongkong on behalf of the Association.

After that the normal Annual General Meeting of the P.C.A. was held on March 10, 1976. Notice was sent to all members. The agenda for the meeting consisted of routine matters except for item (5) pertaining to "Matters for Discussion" where it was stated that after the proposals from members have been received and compiled, a list would be printed and issued. According to the plaintiff in his evidence he as well as others put up many proposals. His own proposals appeared at page 69 in Agreed Bundle A. One of his proposals was connected with the proposed new Constitution of the P.C.A. which had not yet been approved by the Registrar of Societies as certain amendments were required to be made. The plaintiff's proposal merely asked that so as to save time the General Meeting should empower the Executive Committee to deal with the matter. But the plaintiff said in his evidence that none of the proposals from the members were tabled at that meeting except the first defendant's own proposals. According to him the atmosphere at the General Meeting was bad and when members insisted to read their proposals the Secretary gave all sorts of excuses. A quarrel started and the meeting became disorderly and was quickly adjourned. The version of the plaintiff is the more probable one on this matter.

In the meantime, pursuant to the proposal earlier by the plaintiff that the Executive Committee should

launch a membership drive the plaintiff asked the Secretariat of the P.C.A. for more application forms for membership. When the resolution to have a drive for membership was passed the plaintiff said he took some forms and distributed them. Later it transpired that he in fact took 300 forms and had not returned any. In his evidence he said he had distributed these forms to people and it was not his responsibility to collect back these forms; so when he had no more forms left he asked whether the Association had ordered some more new forms and when told that the Association had ordered 3000 new forms he asked if he could get 1000 forms. For this he approached the then Secretary, Yeoh Hor Sang (PW6), who merely suggested that he should take 100 forms first, return them and take another hundred which the plaintiff said was a very inconvenient procedure. As a result the plaintiff suggested that the P.C.A. print 1000 forms for him and he was prepared to pay for the cost. The secretary could not promise him anything until he consulted the president. Apparently the president disagreed and DW1 later gave the reason in his evidence that if anybody should print forms it was the P.C.A. and not anybody else and the money used should also be the money of the P.C.A. and not anybody else's money.

On March 19, 1976 the plaintiff sent his clerk (PW3) to the P.C.A. office to get the forms but she came back with only one form and reported to the plaintiff that the procedure now was that one member was entitled to only one form and the member must also give full particulars of his identity card, name, address, etc., and the form with the common seal only would be valid. Following this there was a telephone conversation between the plaintiff and the then secretary which ended in nothing specific as the secretary had to consult the president first. But the plaintiff admitted in his evidence that he asked the secretary if he could print his own forms. The secretary said the president disallowed that.

On March 25, 1976 a notice was sent to members of the Executive Committee of the P.C.A. for an Executive Committee Meeting to be held on April 5, 1976 at 7.00 p.m. at the hall of the Perak Chinese Chamber of Commerce, Ipoh. The agenda set out in the notice was the usual one except that under item (4) there is a reference to applications for membership. All the committee members received this notice. On March 31, 1976 another notice was sent to members of the Executive Committee of the P.C.A. informing them of an additional item to be discussed at the meeting on April 5, 1976. The additional item is worded as follows. "Matters concerning Yong Su Hian using the name of this Association without authority to privately print documents of this Association." The wording of the additional item as appearing in the English version looked perfectly innocent. However, a lot of time was taken by both parties on the use of certain words in the Chinese version. DW2, Dato Ng Song Choon, however said he saw nothing "unusual" or "wrong" in the Chinese wording of the additional item but to the plaintiff the wording he said was insulting to him. For example, the word "document" would seem in Chinese to imply an official document used for official purposes. In the cross-examination of the first defendant references were made to two Chinese-English dictionaries on the use of the word "thau" which if used alone means "using improperly or to use improper method." The word "taw yung" was used in the additional item ("rob" and "use") instead of "shan yung". DW1 explained that the word "shan" cannot combine with "yung" and that he denied that he used the word "taw yung" (document) and not "application forms" to mislead members and to humiliate the plaintiff. However, it must be noted and that it is admitted that it was not DW1 who prepared the wording of the additional item but someone in the Secretariat of the P.C.A. I propose to look at this allegation of the plaintiff in the light of the broader question of his alleged loss of reputation later in the judgment.

According to the version of the plaintiff he never printed the 2000 forms which was the subject of the allegation against him. He said they were printed by one Chong Swee Sang (PW2) whose letter to that effect the plaintiff took to the meeting on April 5, 1976. DW1 however alleged that the writing on the letter (87) in Agreed Bundle A was the writing of the plaintiff as he was familiar with the writing of the plaintiff although the letter was signed by the said Chong Swee Sang. This did not seem to be disputed by the plaintiff. He is recorded in the minutes of April 5, 1976 meeting to have said it did not matter who wrote the letter as the letter was signed by PW2. That letter (87) in Agreed Bundle A was a statement by Chong Swee Sang that it was he and not the plaintiff who ordered the printing of the application forms for membership of the Association. PW2 also testified to that effect. PW2 was a member of the P.C.A. but not an Executive Committee member. In his evidence at page 39 he clearly admitted being responsible for printing the 2000 forms.

According to the plaintiff's evidence, before the meeting on April 5, 1976 he tried and managed to seek audience with the first defendant. He said he apologised to him as courtesy to an elder in the good old Chinese tradition. He then showed him Chong's letter and also the cash sale bill of the Kuang Ming Press (74) in Agreed Bundle A. All this was denied by DW1 in his evidence. DW1 only said the plaintiff only saw him but he replied that it would be better to leave everything to the committee members to decide.

According to the plaintiff and his witnesses the atmosphere during the meeting was tense and there was a lot of arguments. According to the plaintiff he produced Chong's letter as well as the cash sale bill and asked the secretary to read them out. He also requested that the agenda regarding the allegation against him should be withdrawn and his proposal was in fact seconded by Chin Kee Seong (PW9). The other evidence tabled against him at the meeting was a letter from Kuang Ming Press the relevant portion of which reads as follows. "However according to the person who took delivery of the forms, it was Mr. Yong Su Hian who had instructed him to take the delivery and payment was made in cash. The receipt was made out in the name of the Perak Chinese Asso-

ciation." Another evidence used against him was the statement of Foo Wan Thot (PW4) who had said at a previous meeting that he had taken some forms from the plaintiff. Many people spoke during the meeting on the additional item. According to the minutes of the meeting the plaintiff said that members must be careful and not to think that they could expel because they had the majority. Some members present represented guilds and associations and had no mandate to decide before consulting their own guilds and associations. The plaintiff threatened that he may sue for defamation. The legal adviser to the P.C.A., S.Y. Lee (PW10) was also recorded in the minutes to have said that the Executive Committee had no right to expel the plaintiff but the Chairman overruled him. Various other members spoke on various ways how to solve the problem. Emotions ran high. References were made to recent "selfish bickerings" during every meeting of the Association. Reference was also made to the conduct of the plaintiff as fault-finding. The call for Chinese unity was made so as not to allow the matter to explode but to solve the matter amicably for the sake of the Chinese community. The representative of San Jiang Association expressed the hope that the matter could be looked into clearly and careful consideration be made. In the end only two proposals were put to vote. The first proposal was whether to form a sub-committee to look into the matter and the second proposal was that the original proposal to stand which implied that the plaintiff was guilty as charged. It is pertinent to note here that nothing whatever was mentioned about the proposal of the plaintiff to withdraw the additional item which was seconded by PW10.

Various versions from the witnesses for the plaintiff and the defendants were given as to what happened at this crucial period of the meeting. According to plaintiff's witnesses, by then many members had walked out whereas in the version of the defendants' witnesses the voting was done when members were seated and those who abstained were standing near the press table and had their names recorded as abstentions. The second proposal obtained 16 votes and was passed. The first proposal obtained 12 votes and spoilt votes amounted to 7 and there were 6 abstentions. When the second proposal was passed the Chairman declared the first proposal to stand and at the same time "deemed fit" that Mr. Yong Su Hian had actually infringed Article 29(ii) of the Constitution by "using the name of the Association without authority to privately print documents of the Association." The Chairman then handed the matter over to the Executive Secretary for discussion. Minutes as recorded indicate that immediately members proceeded to vote on the ceasing of membership of the plaintiff with 9 persons abstained and no one objected. According to the plaintiff the manner in which the Chairman put the question to vote was in the negative and therefore prejudicial in that if anybody objected to the expulsion to raise their hands. Of course no one raised their hands. According to DW1 later in his evidence the reason why he put the question in this way for voting was only because he wanted the plaintiff to know who decided against him and who decided in his favour as he had threatened to sue earlier on.

Following the expulsion by the Executive Committee that evening there was wide publicity given in Chinese newspapers the following day and thereafter with regard to the incident. Various press cuttings on this can be found in the Agreed Bundles A and B. Press statements were released by supporters of the plaintiff. In the meantime, plaintiff appealed for reinstatement after receiving the letter of clarification from Kuang Ming Press and also clarification from Foo Wan Thot (that he had made a mistake in his earlier statement) but nothing happened. The plaintiff did not attend subsequent Executive Committee meetings on May 8, 1976 and May 12, 1976. He knew of the notice of the Extraordinary General Meeting through the Perak Chan Kong Association of which he was a member. The Extraordinary General Meeting was held on May 30, 1976. The plaintiff remained outside the hall when the Extraordinary General Meeting was in progress. According to evidence adduced on behalf of the plaintiff the atmosphere was bad and that the members were divided into two groups. When some one from the front portion of the hall spoke the front portion people clapped their hands and when some one from the back portion of the hall spoke only the back portion people clapped their hands. They also observed that the old faces of members of the P.C.A. were at the back portion of the hall whereas the faces in the front portion were new faces insinuating that these were the new members (numbering 829) admitted at the Executive Committee Meeting held on May 12, 1976. But having regard to the evidence adduced this would be no more than a mere conjecture.

Both parties gave different versions of what happened at the Extraordinary General Meeting. All the witnesses giving evidence on behalf of the plaintiff said that the meeting was disorderly, and especially so, during the later stage after Foo Wan Thot (PW4) was stopped from speaking any further. All admitted however that at least 12 to 14 people were allowed to speak from the floor and mostly in favour of the plaintiff or at least that the matter in the agenda should be deferred. The version of the witnesses for the defendants is of course diametrically in opposition to that of the plaintiff's witnesses in that the meeting was quite orderly although there was some excitement due to the nature of the subject of the debate. The voting was done properly and nothing irregular in the procedure was admitted. One area in which the parties in this case gave entirely different versions is the manner the voting was conducted at the Extraordinary General Meeting on May 30, 1976. The plaintiff's version is that the first defendant hurriedly terminated the debate and forced the members to vote and the voting was on three proposals. The clearest version of what happened during this crucial period of the proceeding can however be found in the testimony of PW10 (S.Y. Lee) at pages 213 and 214 of the notes of evidence as follows: —

"I remember the voting was 3 times. First voting was for to vote for the agenda and stop further discussion. There was a show of hands. The second voting for those in favour to proceed for further discussion. There was a show of hands. Between the two it was quite close but the first appeared to have majority. Then the voting was to accept resolution of executive committee. Then it was quite disorderly as some began to leave but there was a show of hands. When Foo

was stopped from speaking there was some protest and some members started to walk out of the hall."

That there was confusion at some stage of the voting does not seem to be seriously disputed, as also the fact that about 200 members left the meeting hall at or during the time of the voting. According to some of the plaintiff's witnesses when Foo Wan Thot was stopped from speaking about "40 per cent" of the members had left the meeting hall. This could be an exaggeration if the photographs (D16) can be of any help. The defendants and their witnesses took much pain in trying to establish that the meeting was in fact orderly and the voting done properly and although there were some members who walked out they were only in the minority. The real truth must lie somewhere in between the version of the plaintiff and that of the defendants. I myself on reading the evidence as a whole have no doubt whatever that the decision made on the voting at the Extraordinary General Meeting of the P.C.A. held on May 30, 1976 was a decision of the majority. It is not seriously disputed either that ample opportunities were given to people from the floor to speak but it was admitted that many people wanted to speak but were not able to do so as the meeting became disorderly when some members demanded that some decision be taken and that members had spoken enough.

Another area where there was a sharp difference in the version of the parties was whether in fact there was actual counting of hands during the voting at the Extraordinary General Meeting on May 30, 1976. All the plaintiff's witnesses said there was no counting of hands as the time taken for the three proposals being put to vote was very brief. According to PW8, (Lai Kap Kooi) at page 192 of the notes of evidence, he said:

"Foo Wan Thot was last speaker. He did not finish his speech. He was stopped by President because time was up. I did not speak. I intended to speak but there were so many speakers. I did not raise my hand.
Altogether there were 3 votings and all took 4-5 minutes. There was confusion at the meeting."

All the other plaintiff's witnesses too said that all the votings took about 5 minutes.

DW1 in his evidence (at page 277) admitted that the time taken between voting and the announcing of the results is about 10 minutes. DW4 said the meeting was "noisy" but orderly and he said he and his four assistants were responsible for counting the votes. But on reading his evidence and on seeing the way he answered questions I cannot say honestly that his testimony should be believed. Therefore comparing the evidence of the plaintiff and that of the defendants it was very unlikely that there could have been any actual counting of hands but notwithstanding that I have no doubt whatsoever that the decision on May 30, 1976 was a decision by the majority. But that is still not the really crucial issue in this case.

The grievances of the plaintiff judging from the pleadings and evidence adduced at the trial can be summarised as follows: —

(1) The decision to expel him both at the Executive Committee Meeting of the P.C.A. on April 5, 1976 and the ratification of that decision at the Extraordinary General Meeting on May 30, 1976 were arbitrarily made. This grievance manifested in the testimony of some of the plaintiff's witnesses to the effect that the decision was an expression of the "dictatorship of the majority." PW9 said in his evidence at page 201 "I felt the Association was using dictatorship of the majority." On this point I would like to point out that there is a lot of truth in what some cynics say about democracy, in that, in any parliamentary democracy where there is free election "the people get the government they deserve." Likewise in the case of the P.C.A. where there is free election to the posts in the Executive Committee governing the P.C.A. it is no ground for the plaintiff to complain that the majority of the members of the Executive Committee voted against him on April 5, 1976 and that the majority of the members of the general assembly of the P.C.A. voted against him at the Extraordinary General Meeting on May 30, 1976. Democracy in its real essence is, in effect, dictatorship of the majority. Thus, there is a world of difference between a democratic government and a just government. Therefore in this case the crucial question is not whether the Executive Committee of the P.C.A. acted *democratically* on April 5, 1976 but whether it acted *justly* on the expulsion of the plaintiff;

(2) It is also a grievance of the plaintiff that the first defendant had acted in bad faith as shown by his conduct at the various Executive Committee meetings before the expulsion of the plaintiff and at the Extraordinary General Meeting. According to the plaintiff he was high-handed and always annoyed by the questions posed by the plaintiff especially questions pertaining to his absence abroad without leave and questions pertaining to the efficiency of the Secretariat of the P.C.A. There is one particular incident which the plaintiff would seem to rely on to show bad faith on the part of the first defendant and that was the incident when PW11 went to meet the first defendant in his office in the afternoon before the crucial meeting on April 5, 1976. According to PW11 (Pu Woh Sing) the first defendant took out an envelope from his pocket and said that it was his letter of resignation if the plaintiff was not expelled. This however was denied by the first defendant and there is no other evidence anywhere to corroborate what PW11 said. In any case even if I believe what PW11 said that fact alone is not a sufficient basis for me to make a finding of bad faith in the conduct of the meeting on April 5, 1976;

(3) The wording in the Chinese version of the additional item of the agenda to be discussed at the Executive Committee Meeting on April 5, 1976 was according to the plaintiff deliberately made so as to humiliate him. The Chinese words used connote that he was a person of bad character. As I said earlier in my judgment, the first defendant approved the draft of the additional item and it was not he but someone in the Secretariat of the P.C.A. who drafted the wording. This question should be decided in the broader perspective

of the allegation of loss of reputation by the plaintiff. Therefore, again I am unable to base a concrete finding of bad faith solely on this point;

(4) The plaintiff contended that he was not given sufficient opportunity to defend himself during the meeting on April 5, 1976. The letter signed by Chong Swee Sang and the cash bill produced by him were ignored, so also was the subsequent retraction of the statement by Foo Wan Thot on the matter of the forms allegedly taken from the plaintiff. But on this point the plaintiff is also on a weak ground because his own witness (PW9) stated in his evidence at page 203 that when discussion took place at the meeting on April 5, 1976 the plaintiff also spoke. PW9 said the plaintiff spoke "several times" and gave his version of the story. PW9 also said he himself spoke several times against the expulsion of the plaintiff. But that is not the crux of the issue.

In my view the really crucial questions to be decided in this case are as follows: —

(1) Whether sufficient notice was given to members of the Executive Committee to decide on what they decided on April 5, 1976. It is admitted that that meeting was one of the most well-attended meetings of the Executive Committee of the P.C.A. It is also admitted that some of the members of the Executive Committee represented guilds and associations and it is not disputed that when they attended the meeting they had not as yet consulted their respective guilds and associations on the additional agenda. On this matter there is also the wording of the additional agenda. On this point I am not interested so much in the alleged defamatory words used in the Chinese language there as contended by the plaintiff but I am more interested here in the subject matter of the additional item which I shall examine in due course;

(2) What is the intent and purpose of the provision of Article 29(ii) of the Constitution of the P.C.A.? In other words does that provision empower the expulsion of the plaintiff in the manner done by the Executive Committee on April 5, 1976?

(3) If the decision of the Executive Committee on April 5, 1976 was incorrect and improper or otherwise unlawful could the majority decision at the Extraordinary General Meeting held on May 30, 1976 make the decision correct, proper and lawful?

Before I proceed to answer the above questions I would like to dispose of once and for all the question of alleged bad faith on the part of the defendants. In *Weinberger* v. *Inglis*,[1] Lord Atkinson in his judgment at page 626 said:

"The pith of the respondents' defence is contained in paragraph 9. It runs thus:

'9. The first-named defendants acting *bona fide* and honestly in the exercise of their duty and discretion under rule 21 did not re-elect the plaintiff because they did not deem him eligible to be a member of the Stock Exchange for the year in question and for no other reason.'

The burden of disproving these averments rested upon the appellant. Unless he discharged that burden he must, in my opinion, fail."

One of the allegations the plaintiff alleged as support for showing bad faith was that the plaintiff wanted the court to believe that while the speakers were speaking from the floor during the Extraordinary General Meeting on May 30, 1976 the public address system was intermittently disrupted deliberately. On cross-examination of those witnesses who deposed on this point I am inclined to come to the conclusion that there could have been one or two instances of interruptions in the public address system but they were entirely due to power failure. It is too thin a ground to rely on as basis for a finding of bad faith.

The question of bad faith on the part of the first defendant in particular can in my opinion be disposed of if we understand the two characters in this drama, namely the plaintiff and the first defendant.

The plaintiff, as I said earlier, appears to be a man of rigid principles, bold and outspoken to the extent that his conduct irritated many members of the Executive Committee of the P.C.A. The plaintiff is even described as "fault-finding" by one of his own witnesses. In fact the plaintiff in his own evidence admitted this weakness in him at page 20 of the notes of evidence. He said "Only I kept on pointing out faults and errors at these meetings." This conduct of the plaintiff irritated the majority of the members of the Executive Committee as any normal person would.

Then we come to the character of the first defendant. Here, he is the *prima donna* but a reluctant one. He never wanted to be the President of the P.C.A. but delegations from prominent Chinese leaders saw him and begged him to take over the post (when DW2 resigned) as he was one of the most well-known Chinese personalities in the State. He is an industrialist, hotelier, housing developer and estate owner. In his own words he said he is more successful "than the average successful businessman." The post of the presidentship of the P.C.A. was thrust upon him and he took upon the responsibility only upon the promise that there would be co-operation and smooth running of the organisation. His concern for the organisation is well-expressed in the words of the plaintiff's own witness (PW8) at page 197 who testified as follows:

"During Dato Chong's term he was concerned with welfare work."

In his own evidence DW1 said he is more concerned with charitable and social work and has so far expended about 1 million dollars of his own money to various charitable organisations. A man of such a nature is normally a person used to work efficiently and used to making fast decisions without arguments *if in good faith he believes his decision is right* for otherwise he could not have been "more successful than the average successful businessman"! His sincerity to work for the benefit of the P.C.A. is not disputed by any of the plaintiff's witnesses. When DW2 resigned from the presidentship due to ill health and "other reasons" (he later clarified this to mean too much "politicking" by the plaintiff) the members of the P.C.A. were desperate to find a suitable substitute and for that reason they converged on the first defendant to take over the presidentship. DW1 re-

luctantly accepted after being persuaded by certain prominent members of the Chinese community in the State. In his testimony DW1 when asked whether he was looking for power replied as follows: —

"It is not true I was scared to be toppled in the next election. Restricting one form to one member only temporary measure. *I was not afraid of being toppled. I was afraid of being elected.*

In the evidence of the plaintiff's own witness (PW6) the following appears at page 128 of the notes of evidence:

"The name of P.C.A. and its image became well-known after Dato Ng became President. He was concerned with welfare and charity for all races. When he resigned it was a shock to the Chinese. Majority of committee members wanted him back. The next best choice was Dato Chong Kok Lim. He is well known figure in Malaysia. Well-known miner, industrialist and housing developer. He commands the respect of most of the Chinese."

The praise for DW1 came from another of plaintiff's own witness (PW8) appearing at page 197 of the notes of evidence:

"He always arranged for people to visit affected areas if tragedies occur. I believe he spends his own money also in helping such people. He was concerned with peace and harmony amongst members of the P.C.A."

The allegation against the plaintiff for printing forms was regarded by the first defendant as a very serious matter. He said in his evidence at page 270: —

"I considered it serious matter as against discipline."

The reason he gave was that it amounted to usurping the right of the president and by so doing damaged the image of the P.C.A. Again he reiterated his view on the seriousness of the allegation against the plaintiff at page 280 of the notes of evidence. DW1 said:

"I did not agree it was not serious. It is serious. Printing the forms without authority of the Association is serious to me because the P.C.A. has been earlier called the supreme organisation for the Chinese in Perak not a private club. Otherwise it amounts to disrespect for the Association."

Having regard to all these it is difficult for me to say honestly and with certainty that the first defendant was at any time before or after the crucial Executive Committee Meeting of April 5, 1976 acting in bad faith. If he acted wrongly, he acted in all probabilities on the mistaken belief that he was doing the right thing — the right decision. DW1, as I said earlier, must necessarily be a person used to making decisions, fast decisions if he thinks they are right for that is in fact the way any successful businessman would normally behave. The rest of the members of the Executive Committee of the P.C.A. respected him and obviously agreed with his views except, of course, those few who are with the plaintiff. Two vital questions therefore need to be considered now. Firstly, was the resolution passed on April 5, 1976 at the Executive Committee Meeting of the P.C.A. irregular, wrong or otherwise unlawful? If the answer to this question is in the affirmative, then the second question arises, that is, could that purported resolution be cured by ratification of the general assembly at the Extraordinary General Meeting on May 30, 1976? These two questions can now be answered together with the three crucial questions I raised earlier in the judgment.

(1) On the question of notice to members of the Executive Committee for the meeting held on April 5, 1976, the wording in the additional agenda for the meeting to discuss the accusation that the plaintiff printed the forms did not constitute sufficient notice for the purpose of passing the resolution for expulsion of the plaintiff. This is in my opinion too clear to be argued otherwise. For the words used in the additional item are nothing more than stating that matters concerning Yong Su Hian using the name of the Association without authority to privately print documents of the Association were to be discussed. An ordinary person reading the notice of the additional item must necessarily come to a conclusion that a discussion was to take place on the subject, that is an inquiry as to whether the plaintiff did or did not print the documents. It would be unreasonable to impute knowledge on the part of any member of the Executive Committee of the P.C.A. then that a resolution for expulsion would be put to the vote, much less on the part of the plaintiff although he said he had spoken enough in his defence. I do not think he knew exactly what he meant when he said those words because even the wording of the additional item did not amount to a charge or an accusation in a specific form. Again it is my opinion that where a resolution to expel a member is to be passed the Association must observe the rule that a meeting must be specially convened for that purpose to enable a fair and just inquiry into the matter in question. I am well aware of the established approach or principles adopted by the courts dealing with private clubs or associations as succinctly put by Scrutton L.J. in *Young* v. *Ladies' Imperial Club, Limited.*[2] It has been made clearly understood that the court is not a Court of Appeal from decisions of committees of clubs and associations *provided* of course that the committees are properly constituted and properly summoned and deal with the matter in question in a way not contrary to the principles of natural justice.

It is to be noted that many members of the Executive Committee of the P.C.A. are representatives of guilds and associations and they have not when they attended the meeting on April 5, 1976 as yet obtained any mandate from their respective guilds and associations on the question of the expulsion of the plaintiff. This fact is not disputed in evidence.

Judging from the evidence adduced no proper inquiry was held into the allegation. No doubt there was a heated discussion and in one of the photographs appearing in one of the newspapers in the Agreed Bundle even shows that the then Secretary General, Yeoh Hor Sang, wept. I have no doubt that emotions ran high that evening amongst members of the Executive Committee. But there is evidence also that quite a number of the members gave reasonable proposals that the matter be deferred and a sub-committee be formed. In fact it became one of the two proposals put to the vote but failed. But if the blank votes were

counted together with the votes which supported the proposal to form a sub-committee then the proposal for the expulsion of the plaintiff would not be in the majority. Such was the situation in the minds of the members of the Executive Committee that evening.

There is also conflicting evidence that the plaintiff withdrew his proposal that the additional item be withdrawn from the agenda. This pro-proposal was seconded by PW10. But strangely enough nothing appears in the minutes. This inevitably leaves doubt in the mind of an ordinary person that the proceeding that evening was done in a bit of a rush. I do not feel it safe to conclude what the motive was for that could be known only to those present then and voting in favour of the expulsion. It has been held that when a meeting was fairly called and the decision arrived at *bona fide and not through caprice*, such decision was final, and that the court had no jurisdiction to interfere (*Hopkinson* v. *Marquis of Exeter*[3]). In other words so long as the decision of the committee was not made in a *capricious* or *arbitrary* manner then the court should not interfere. Unfortunately this is not the case before us. What appears at page 115 in Agreed Bundle A shows clearly the situation then. One Ng Kwang Hui was then representing the Perak Sundry Shops' Guild. He said: "All aspects are not clear. Votes should not be taken lightly. The matter is a serious one." and then he proposed to form a sub-committee.

(2) Article 29(ii) of the Constitution of the P.C.A. is under a strange title — "Resignation". Anyway, the words relevant to the present case under that article are to the effect that a member shall be deemed to have ceased to be a member if he uses the name of the Association for private gains or who discredits the good name of the Association. Although the article is under the title "Resignation" if read together with Article 6 of the Constitution, a sensible meaning can be arrived at and that is that a member who has been found guilty of this offence must resign and if he does not resign the Association through a general meeting or through the authority of the Executive Committee can expel him. I think that is the only construction that can make the P.C.A. Constitution workable on this point. So my answer to the second question whether the Executive Committee of the P.C.A. "had power to expel" is in the affirmative but the resolution of expulsion is invalid not because of the lack of power but because of the irregular manner in which it was done.

(3) It is not disputed that the decision of the Extraordinary General Meeting held on May 30, 1976 was the decision of the majority of the members present then. The plaintiff has not been able to establish that those present either were not lawful members or members purposely admitted to enable the ratification of the resolution of the Executive Committee on April 5, 1976. The plaintiff is on very thin ground on this allegation. The basic question here is having decided that the resolution on April 5, 1976 was unlawful, invalid and of no effect, could the ratification purportedly to have been made by the majority of members present at the Extraordinary General Meeting make it valid?

It is to be noted that there was no actual inquiry done on April 5, 1976. Many people spoke including the plaintiff in his defence but there appeared to be no real finding as to the guilt of the plaintiff. Even after the resolution was passed clarifications from Kuang Ming Press Sdn. Bhd. and Foo Wan Thot were brought to the notice of the Executive Committee which were fresh evidence made available. In fact even after the trial a firm conclusion cannot be made on the guilt of the plaintiff. For in the testimony of Chong Swee Sang (PW2) he gave a detailed account of the events leading to the printing of the forms and how he instructed PW3 to place the order. PW3 in her evidence also explained how she placed the order and then sent an Indian boy to collect the forms. The 2000 forms were tendered in court but if there are 2000 forms in court how did Foo Wan Thot get 500 forms? All these are still open questions which were not inquired into on April 5, 1976 and neither were they inquired into on May 30, 1976.

It is also pertinent to note that the President's speech was distributed to members who arrived to attend the Extraordinary General Meeting on May, 30, 1976. The speech gave a detailed account of the events concerning the plaintiff with reference to the allegation but significantly omitted the fresh evidence referred to earlier which therefore deprived the members in the assembly from knowing the full facts of the case.

Another important point with respect to the Extraordinary General Meeting was the fact that although there is evidence that a notice was sent to the plaintiff to attend the meeting there is plenty of other evidence to the effect that throughout the proceeding he was not inside the hall but was walking on the corridor outside. If the defendants wanted to act fairly they could have invited the plaintiff inside the hall and given him an opportunity to be heard before his condemnation be made final. But this was not done. Finally, it is also my view that the notice for the Extraordinary General Meeting on May 30, 1976 was a deficient notice as it merely states "To discuss whether or not to confirm the resolution of the Executive Committee Meeting passed on April 5, 1976 ceasing the membership of Yong Su Hian." It is obvious from the wording of the notice the discussion was confined to the question whether or not to confirm the resolution. As the full merits of the case were not inquired into on April 5, 1976 the Association in its general assembly again failed to consider the full merits of the case. Any decision arrived at without considering all evidence available can never be a fair or just decision.

Therefore my conclusions to all the questions posed so far are that the decision on the resolution passed by the Executive Committee of the P.C.A. on April 5, 1976 was irregular, unlawful, invalid and of no effect. The purported ratification by the general assembly of the Extraordinary General Meeting on May 30, 1976 is likewise irregular, invalid and of no effect. Therefore it is hereby declared that the plaintiff is still a member of the P.C.A.

Finally, the question of damages. What is defamatory to a person is any imputation which may tend to lower that person in the estimation of right-thinking members of society generally or to cut him off from society or to expose him to hatred, contempt or ridicule (See *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.*[4]). It is pertinent to note also that the loss of membership of the P.C.A. is not so much a loss of privileges as a loss of responsibilities. For the objects of the P.C.A. are defined in Article 3 of its Constitution, that is to say to promote unity amongst the registered Chinese associations in the State of Perak and to promote friendship, welfare, charity and to settle disputes, to co-operate with other registered Chinese Associations having similar objects and to promote culture, education, science, industry, music and sports. Thus the P.C.A. is an Association more for charitable and social purposes than an Association where amenities to members are the rule rather than the exception. It seems to me therefore that a member of the P.C.A. carries more responsibilities with little or no amenities.

In our present case here, what was the result of the expulsion of the plaintiff by the Executive Committee in the eyes of the public and in particular the Chinese public? It is admitted by both parties that the incident of the expulsion received wide publicity especially in Chinese newspapers. More often than not it is also admitted that views expressed in these newspapers were in fact in favour of the plaintiff. Foo Wan Thot (PW4) said in his evidence at page 103 as follows: —

"By and large views given against the expulsion given publicity I agree. I agree people knew the subject before the E.G.M."

The general view of the witnesses for the plaintiff was that the decision to expel the plaintiff was "too serious" and "harsh" — see, for example, the view of PW6. At the Extraordinary General Meeting itself most of the speakers who spoke spoke in favour of the plaintiff. PW18 was one of the reporters of Chinese newspapers called by the plaintiff to give evidence. He gave full coverage of the event and he also observed, significantly, that although according to his estimation about 40 per cent of the members had left the Extraordinary General Meeting before the actual voting, the majority of those who remained voted in favour of ratifying the decision of the Executive Committee on April 5, 1976.

Looking at the evidence as a whole I am of the view that as a result of the expulsion on April 5, 1976 the plaintiff in fact gained more popularity than ever before. The plaintiff is, as I have referred to earlier, of such a character as to make him a natural leader but a controversial one. According to his own evidence his followers formed only a minority in the Executive Committee of the P.C.A. However, in the rough estimation of an independent witness (PW18) about 40 per cent of those who attended the Extraordinary General Meeting left the hall. These people must have felt disgusted enough at the proceeding of the Extraordinary General Meeting to compel them to walk out of the hall. Whether it was actually 40 per cent of those present or only a rough estimate, it is still significant evidence to show that the plaintiff had by that time (i.e. between April 5, 1976 and May 30, 1976) a substantial number of followers and supporters. So it could not be true to say that he has lost face as a result of the expulsion; for I would rather say to the contrary, that he has by the expulsion gained more fame than he had ever expected. To the ordinary member of the P.C.A., like PW2, he is a hero, as it is true to human nature that when one is courageous enough to fight against the establishment, so to speak, one becomes a champion in the eyes of the ordinary man. Under these circumstances it is my considered opinion that the question of damages for the plaintiff does not arise at all.

My order will therefore be as follows: —

(a) As there was no real or genuine inquiry made into the allegation against the plaintiff either on April 5, 1976 or at the Extraordinary General Meeting on May 30, 1976 any purported finding of guilt (expressed or implied) against the plaintiff on either occasion would be tantamount to a breach of basic rules of natural justice. It is therefore hereby declared that the resolution passed by the Executive Committee Meeting of the P.C.A. on April 5, 1976 and its subsequent confirmation by the Extraordinary General Meeting on May 30, 1976 is null and void;

(b) As there is insufficient evidence to establish bad faith in either the first defendant or any of the other defendants as stated in the grounds given earlier in this judgment, I shall make no order as to damages;

(c) Costs to the plaintiff.

From the above judgment the defendants appealed to the Federal Court.

FEDERAL COURT.

R.R. Chelliah (*Dato Sri V. Jeyaratnam* and *Dato Sheikh Abdul Rahman* with him) for the appellants.

Lim Kean Chye (*Chin Fook Yen* with him) for the respondent.

Chang Min Tat F.J.: I will ask Abdoolcader J. to deliver the first judgment.

Abdoolcader J. (delivering oral judgment): This case, which, like the papacy of Pope John Paul I, lasted 33 days in the hearing, involves the question of the validity of the respondent's expulsion from membership in the Perak Chinese Association by a resolution of its Executive Committee on April 5, 1976, which was confirmed by an Extraordinary General Meeting of the members of the Association on May 30, 1976, on the basis of an allegation that he had used the name of the Association without authority to privately print documents of the Association, re-

ferring in fact to forms for application for membership in the Association. The respondent applied to the High Court to set aside his expulsion on the grounds that the resolution in question and the confirmation thereof were *ultra vires*, in breach of the rules of natural justice and made in bad faith and also claimed damages for wrongful expulsion. The learned judge declared the resolution of the Executive Committee effecting his expulsion and the confirmation thereof by the Extraordinary General Meeting void and of no effect but made no order for damages, and the appellants now appeal against the declaration made and the respondent cross-appeals on the matter of damages.

THE ISSUES.

The basic issues involved in this appeal would appear to be four-fold:

(1) *Do the Rules of the Association empower the expulsion of a member?*

Rule 29 of the Association's Rules which reads:

"*Chapter XII — Resignation*

29. Upon happening of the following events a member shall be deemed to have ceased to be a member namely:—

(i) in arrears of annual subscription for more than 2 years.

(ii) Use the name of the Association for in (sic) private gains or who discredit (sic) the good name of the Association. The Association may decide to have legal action against such member."

is certainly not ideally worded but on a fair and reasonable construction the intention must be to empower what is, not to mince words, tantamount to expulsion of a recalcitrant member who falls within the ambit of paragraphs (i) or (ii) thereof but refuses to relinquish his membership. Rule 6 would make the general meeting of members and when it is not in session the Executive Committee the body seized of this power as the highest authority of the Association. The chapter heading "Resignation" to rule 29 is therefore either a misnomer or is at least intended to include an involuntary or induced surrender and divestiture of membership. The rules have no express provision for resignation *ex voluntate* but this surely cannot mean that a member cannot resign *suo motu* since his relationship with the other members of the Association is contractual, as indeed Mr. Lim Kean Chye for the respondent concedes.

Mr. Lim Kean Chye however submits that only a court of law can decide on the question of the cessation of membership under rule 29. I cannot accept this submission as it is not the function of the court to determine whether any particular case as it arises comes within rule 29. The court will only intervene if there has been a misinterpretation or misapplication of the rules, which, as will be seen presently, is a question of law. The last sentence in rule 29, namely, "The Association may decide to have legal action against such member" must, in my view, necessarily refer perhaps to action for recovery of arrears of subscription in a case under paragraph (i) of that rule and certainly for relief, monetary or otherwise, in that within the purview of paragraph (ii). There is no merit either in the contention that in any event the respondent cannot be expelled as he is a life member of the Association, and as I remarked when this point was taken, that just as life is subject to termination by death, I can see no reason why the premature termination of life membership is precluded unless there is an express provision to this effect in the rules.

I would have thought the correct and proper way to deal with such a situation as in this case would have been for the Executive Committee to put the matter to the general meeting of members with perhaps a recommendation, and in the matter before us there certainly did not seem to be any extreme urgency. However the Executive Committee had power to resolve as they did on April 5, 1976, and the resolution for expulsion was not *ultra vires* on that ground but this nevertheless still leaves open the question of *vires* with regard to the nature of the allegation made against the respondent in relation to the application for the express provisions of rule 29(ii).

(2) *Whether adequate notice and hearing was given and due inquiry made at the Executive Committee meeting on April 5, 1976, in respect of the allegation against the respondent which would attract the application of the provisions of rule 29(ii) and justify his expulsion thereunder.*

The additional agenda for the Executive Committee meeting on April 5, 1976, reads: "Matter concerning Yong Su Hian using the name of this Association without authority to privately print documents of this Association." It is apparent from the evidence that the Chinese version sent to the Executive Committee members was somewhat sinister in phraseology, virtually charging the respondent with a criminal offence — using the Chinese word equivalent to 'rob' or 'steal' or 'plunder'.

The additional agenda was dated March 31, 1976, and sent out to the Executive Committee members after notice of that meeting and the agenda therefor had previously been despatched on or about March 25, 1976. Rule 24 provides that 6 days' notice of each Executive Committee meeting shall be given to the members, and the notice of meeting must in accordance with the normal practice include the agenda. The additional agenda did not therefore meet the 6 days' requirement of this rule.

Apparently according to the minutes of the Executive Committee meeting on April 5, the 'proposal' in the additional agenda was passed by voting by secret ballot, but I cannot see how that item could be a proposal; it was only an item for discussion.

At that meeting no due inquiry was made as to the allegation against the respondent, particularly as to his "using the name of the Association", and all the more so in view of the cash bill from Kuang Ming Press produced by him. The explanation given by the respondent seems to have been brushed aside and an assumption made that the letter from Chong Swee Sang (PW2) exculpating him was false. The cash bill from Kuang Ming Press and the advice of the Association's legal adviser were ignored. If in fact the Committee were acting fairly, the meeting should have at least adjourned to summon Chong Swee Sang (PW2) to clarify the position.

I would pause here to observe, in view of the arguments addressed to us on the several matters I have touched on, that cases like *Dawkins* v. *Antrobus*[5] and *Maclean* v. *Workers' Union*[6] should now be read in the light of *Lee* v. *The Showmen's Guild of Great Britain*,[7] an authority not referred to by either side, to which I shall presently revert and in which the principles upon which the courts will intervene in decisions of domestic tribunals in relation to the power of expelling a member are fully reviewed and discussed (at pp. 341-347).

The additional agenda was not a charge or accusation directed as such, it was not specific at least in relation to rule 29, it was an item for discussion only (when read together with the notice and agenda sent out on March 25, 1976, for the Executive Committee meeting on April 5) and no notice of what the respondent was actually accused of doing was given which would attract the provisions of and justify his expulsion under rule 29(ii). It appears from the minutes of the Executive Committee meeting on April 5 that in the midst of the discussion on the additional agenda and even before a decision was taken as to whether or not the allegation therein had in fact been substantiated, the 1st appellant, the President of the Association, who was the Chairman of that meeting invited the Executive Committee to discuss whether or not to take action under rule 29 to rescind the respondent's membership whereupon the Association's legal adviser immediately said this could not be done but his advice was ignored, and a little later in the discussion the 1st appellant said there was no need to follow the opinion of the legal adviser.

After the 'proposal' in the additional agenda was purportedly passed by the Executive Committee, what followed, according to the minutes, reads: 'Then the Chairman declared that the "first proposal (referring to the additional agenda) to stand" and at the same time deemed it that Mr. Yong Su Hian had actually infringed Article 29, section 2 of the Constitution (referring to rule 29(ii)) by "using the name of the Association without authority to privately print documents of the Association." Then handed over to the Executive Committee to discuss'. The Executive Committee immediately without more ado and without any consideration or discussion whatsoever proceeded to vote on the ceasing of the respondent's membership. The original word in the minutes of that meeting was "rescinding" but this was amended to "ceasing" when the minutes were confirmed at the subsequent Executive Committee meeting on May 12, 1976. The result is minuted as '9 persons abstained. No one objected. Resolution passed'.

Now what the 1st appellant did at that meeting was not to ask those in favour of expulsion to vote but to proceed in a somewhat negative manner by inquiring if anyone objected. Some of the guild and association representatives on the Executive Committee indicated in the discussion on the additional agenda that they had no adequate notice of this and no mandate in the matter and would want to consult their principals. No notice at all, let alone adequate notice, was given of this resolution to expel the respondent and this must have taken everybody by surprise.

Mr. Chelliah for the appellants submits however that when notice of the additional agenda was sent out, the respondent knew what he was being accused of and that he was liable as a result to be expelled from the Association, and he also refers in this connection to the evidence regarding some members meeting at the Station Hotel a few days before the Executive Committee meeting on April 5 to discuss the additional agenda and that of three witnesses, Pu Woh Sing (PW11), Lau Sum Meng (PW12) and Kwok Voon Chien (PW13), who had testified, in essence, that they were conscious of the fact that the additional agenda might involve the expulsion of the respondent. But the question still remains, if expulsion was at all in the minds of the respondent and these three members as a possible consequence of the item in the additional agenda, that they certainly did not know on what particular ground, that is to say, under which of the specific provisions of rule 29(ii), it would or could be effected. There was no specific accusation formulated under the particular applicable limb of rule 29(ii) as a result of which expulsion could ensue and no notice given to that effect, and if as a result of the discussion on the additional agenda the question of expulsion did arise I would have expected a proper charge under rule 29(ii) to have been presented, a hearing given in respect thereof, a discussion ensuing and as a result a finding and determination made on that question, and also perhaps even before that an adjournment of the proceedings to enable the respondent to meet this charge and for the other Executive Committee members who were representatives of guilds and associations to obtain a mandate in respect thereof from their principals. If therefore the question of a possibility of expulsion as a result of the additional agenda was present in the minds of a small minority in the Executive Committee, this was mere amorphous speculation and no more, and in any event there is no evidence that it occurred to all the other members as well.

Chong Swee Sang (PW2) was unable due to a prior commitment to be present in person at the Executive Committee meeting on April 5 to clarify the position and hence the letter signed by him exculpating the respondent which the latter produced at that meeting but the authenticity of which was apparently doubted. If the respondent had known beforehand of the move to be made for his expulsion at that very meeting, he could and would no doubt in my view have dragged Chong Swee Sang (PW2) from his dinner engagement in Jelapang to the meeting that evening.

There does not appear to have been any notice, hearing, inquiry, determination or finding on the allegation made against the respondent in the additional agenda that he (a) had used the name of the Association (b) for private gain or (c) had discredited the good name of the Association, within the provisions of rule 29(ii), and there was therefore no justification whatsoever for applying and proceeding against him under that rule.

Although in the past courts were inclined to say that the proceedings of domestic tribunals should not

be lightly interfered with, there has been a decided change in approach since. The courts will now always interfere when disciplinary action is taken beyond jurisdiction by any domestic tribunal (*Lee* v. *The Showmen's Guild of Great Britain,*[7] *Andrews* v. *Mitchell;*[8] *Abbott* v. *Sullivan*[9]).

Lord Upjohn in *Armah* v. *Government of Ghana*[10] pointed out that in the older cases dealing with prerogative writs, interference had been based on the concept of jurisdictional error. He went on to say (at p. 257):

"This test as interpreted in the later cases is a sound test, but it can be approached by a rather different kind of reasoning — for there can be no doubt that the superior courts have always, by the exercise of their supervisory powers, under the prerogative writs, controlled not only questions of jurisdiction in a literal sense, but of law, which includes, of course, the question whether there was any evidence sufficient to justify the finding of the inferior court."

That the same approach can be applied to findings of fact by domestic tribunals is shown by *Lee* v. *The Showmen's Guild of Great Britain.*[7] The Committee of the Showmen's Guild decided that Lee, on the facts, was guilty of 'unfair competition'. It imposed a fine and since Lee did not pay it he was expelled from the Guild. Lee then sought injunctions to restrain the union from expelling him and from publishing in the trade newspaper that he was no longer a member. Denning L.J., (now Lord Denning M.R.,) emphasised that the power of the court to intervene was based upon a contractual relationship between Lee and the Guild, and further that the true construction of that contract was a matter of law to be decided by the courts and by no one else. He went on to point out, however, that a court could also interfere "if there was no evidence to support the finding of the committee" (at p. 345). Denning L.J., said (at pp. 343-344):

"But the question still remains: to what extent will the courts intervene; They will, I think, always be prepared to examine the decision to see that the tribunal has observed the law. This includes the correct interpretation of the rules. Let me give an illustration. If a domestic tribunal is given power by the rules to expel a member for misconduct, such as here for 'unfair competition', does that mean that the tribunal is the sole judge of what constitutes unfair competition? Suppose it puts an entirely wrong construction on the words 'unfair competition' and finds a member guilty of it when no reasonable person could so find, has not the man a remedy? I think that he has for the simple reason that he has only agreed to the committee exercising jurisdiction according to the true interpretation of the rules, and not according to a wrong interpretation."

Viscount Dilhorne in delivering the judgment of the House of Lords in *Parviz Faridian* v. *General Medical Council*[11] said (at p. 1001):

"Whether in relation to a given matter a doctor has been guilty of infamous conduct is a question of mixed fact and law, the question of law being whether on the facts proved or admitted the doctor has been guilty of infamous conduct (see *Felix* v. *General Dental Council*[12] at p. 717)."

Applying the principles stated in the authorities I have referred to, it is clear ,that no consideration was given to nor any determination or finding made on the question of whether or not the allegation against the respondent in the additional agenda comes within rule 29(ii), and indeed I would think no reasonable person could on the facts and evidence presented so find, as Lord Denning put it in *Lee* v. *The Showmen's Guild of Great Britain.*[7] This matter of expulsion under rule 29(ii) as a result of the allegation contained in the additional agenda but which had to be brought within the four corners of that paragraph in the rule was an entirely new accusation or charge thrown against the respondent and thrust upon the Executive Committee without any notice whatsoever precipitately as a matter of improvisation and railroaded through without discussion although guild and association representatives had earlier complained that they had no mandate even on the additional agenda.

In *Walter Annamunthodo* v. *Oilfield Workers' Trade Union,*[13] the Privy Council held that even where adequate notice had been given to a person charged with misconduct, a tribunal may not at an adjourned hearing, at which the party is not present, proceed to deal with a more serious charge than the one originally made, even though it arises in the same circumstances. The appellant in that case was charged before the General Council of the union with offences against certain union rules. He could not, in fact, be expelled from the union because the penalty of expulsion could be applied only to second or third offences under the rules and these were the appellant's first offences. At an adjourned meeting at which the appellant was not present, a further offence, that of 'conduct prejudicial to the interests of the union' was preferred. The appellant was found guilty of this offence and expelled from the union. An appeal taken to the Annual Conference of Delegates proved abortive. In the action he instituted the appellant sought a declaration that the expulsion was *ultra vires* and void. The declaration was awarded on the basis that in failing to give the appellant notice of the fresh charge the General Council had failed to observe the requirements of natural justice. Lord Denning in delivering the judgment of their Lordships said (at p. 956):

"If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man to be denied justice."

The respondent could not be expected to know that he might be dealt with for an entirely separate and distinct matter involving the question as to which of the limbs in rule 29(ii) would encompass it and whether it did in fact do so as to justify his expulsion under that rule. If the Executive Committee desired to proceed under that rule, they ought to have adjourned the proceedings so as to give him adequate notice thereof and enable him to prepare to meet that charge and by failing to do so, they failed to observe the requirements of natural justice or fair play in action. Adequate notice was also required for but not given to the members of the Executive Committee and more particularly those representatives of guilds and associations who had to obtain a mandate in the matter from their principals, and furthermore the eight Executive Committee members who did not attend that meeting but presumably received the additional agenda had no means of knowing that the question of the respondent's expulsion under the provisions of rule 29(ii) would be raised and decided then and there.

I would also in regard to the matters I have adumbrated refer in support to the cases of *Young* v.

Ladies' Imperial Club Ltd.,[2] *Labouchere* v. *Earl of Whamcliffe*[14] and *John* v. *Rees*.[15]

In the circumstances the decision of the Executive Committee on April 5, 1976, to expel the respondent cannot be valid.

(3) *Did the decision of the Extraordinary General Meeting on May 30, 1976, to confirm the resolution of the Executive Committee on April 5, 1976, to expel the respondent validate his expulsion?*

The Privy Council held in *Vasudevan Pillai* v. *City Council of Singapore*[16] (at p. 1286) that a breach of natural justice is curable on appeal and can be rectified by an appellate body which has also original jurisdiction and exercises that jurisdiction in the particular case. *Leary* v. *National Union of Vehicle Builders*[17] stands by itself and is not an authority binding on us. *Vasudevan Pillai*[16] was approved and followed in *Stringer* v. *Minister of Housing and Local Government*[18] (at pp. 1292-1293).

The reference of the respondent's expulsion to the Extraordinary General Meeting was however not presented as an appeal by him to a higher authority, but only as a submission by the Executive Committee to that body "to discuss specifically whether or not to confirm the resolution of the Executive Committee of April 5, 1976, ceasing the membership of Yong Su Hian", as the Notice of the Extraordinary General Meeting states. The question of his expulsion was referred to the Extraordinary General Meeting only as a result of a discussion at the Executive Committee meeting on May 12, 1976, following new evidence in the matter and on a proposal made by a member to that effect.

The 1st appellant's opening address at the Extraordinary General Meeting on May 30, 1976, was in effect an indictment and virtually a denunciation of the respondent. It startingly and significantly omitted to refer at all to the new evidence which threw light on the question of the accusation against the respondent, namely, (a) the second letter from Kuang Ming Press withdrawing the allegation made against the respondent in their first letter and explaining how it came to be written, (b) the letter of clarification from Foo Wan Thot (PW4) withdrawing his previous implication against the respondent and (c) the press statement issued by Chong Swee Sang (PW2) publicly acknowledging that he personally had had the forms printed, and also the cash bill from Kuang Ming Press which the respondent had produced before the Executive Committee, and the Extraordinary General Meeting was therefore left in blissful ignorance of the true facts of the whole matter. Only one side of the matter, the accusatorial side, was disclosed to the Extraordinary General Meeting.

The respondent was not invited or called upon to explain his position at the Extraordinary General Meeting and offer his defence to the allegation against him as he should have been, as it was his expulsion from the Association that was in issue and under discussion and consideration. There was some dispute as to whether he was notified at all of that meeting. He said he was not but attended as a representative of the Perak Ts'angkong Social League with a mandate not to speak and that he did not enter the hall where the meeting was held but was in the corridor outside to observe the proceedings.

There was therefore even worse flouting of the requirements of natural justice at the Extraordinary General Meeting with only one side, the adverse side, of the matter presented to the members present. The basic considerations in the matter were not properly inquired into at the Executive Committee meeting on April 5 and even less so at the Extraordinary General Meeting and any decision arrived at was accordingly vitiated.

The decision to expel the respondent arrived at by the Executive Committee on April 5 was invalid for the reasons I have given, and there was therefore no question of the Extraordinary General Meeting being able to confirm an invalid decision, and in any event nothing transpired at the Extraordinary General Meeting to rectify the position or cure the initial defects in the decision of the Executive Committee on April 5 nor was the decision to expel the respondent then viewed and considered in the light of the specific provisions of rule 29(ii). The proceedings on May 30, 1976, would appear to be no more than an exercise to get the members in general meeting to formally endorse and rubber-stamp the decision of the Executive Committee.

(4) *Whether there was mala fides and bias.*

On the question of *mala fides*, it does not appear necessary in all the circumstances to interfere with the learned judge's finding of insufficient evidence to establish it, but I would only observe that this case comes very close indeed to the borderline as it did in *Congreve* v. *Home Office*[19] where the Minister's motives were highly suspect but the question of bad faith was not mentioned, and in *Regina* v. *Secretary of State for the Environment, Ex parte Ostler*[20] where bad faith verging on fraud was alleged but the Department was saved by a holding that a time limit privative clause was effective.

As to bias, there was certainly considerable manifestation and likelihood of bias and prejudice on the part of the 1st appellant against the respondent, and he should never have in my view presided at the Executive Committee meeting on April 5 and the Extraordinary General Meeting on May 30, 1976.

The 1st appellant was the dominant personality in the Association, a powerful figure wielding tremendous influence amongst the members. He was the accuser and initiated the accusation in the additional agenda for the Executive Committee meeting on April 5 which was put up on his order, as he admitted at that meeting in answer to a specific question put to him by the respondent.

On the evidence, the 1st appellant certainly resented, to put it mildly, the respondent's somewhat outspoken views and criticisms at previous Executive Committee meetings, particularly in his query on such matters as the 1st appellant not notifying the Secretariat when away on leave, his private secretary's participation in the management of the Association's

Secretariat on his behalf and the question of pledged but unpaid donations, which in fact resulted in a resolution at the Executive Committee meeting on February 12, 1976, that "hereafter any proposal from Yong Su Hian be it oral or written, if it infringes the Constitution (referring to the Rules of the Association) or a resolution shall not be tabled for discussion." It is also abundantly clear from the evidence that the 1st appellant considered the respondent in the circumstances to be a source of vexation and a *bête noire*.

A few days before the Extraordinary General Meeting on May 30, four members of the Executive Committee, Foo Wan Thot (PW4), Yong Cheng Moh (PW7), Chin Kee Seong (PW9) and Sum Kai Meng, addressed a letter to the 1st appellant (which is reproduced in full in the Kin Kwok Daily News issue of May 28, 1976) requesting the attendance of the Association's legal advisers or some responsible lawyers at the Extraordinary General Meeting to explain to the members the legal aspects of the matter and also that a poll by secret ballot be taken at that meeting in the matter of the confirmation or otherwise of the decision of the Executive Committee on April 5 to expel the respondent, but these requests appear to have been wholly ignored and were not even intimated to the members at the meeting itself.

At the outset of the Extraordinary General Meeting on May 30, there was a specific request by a number of members that the 1st appellant should not preside at the meeting in view of his interest in the matter as the initial accusation against the respondent originated from him but the 1st appellant did not give way.

Apropos the question of cliques in the Association, the learned judge says in his judgment that there were denials by the appellants that there were any such cliques but that he was more inclined to accept the evidence of the respondent that there were, but I must immediately point out that there is in fact an admission to this effect by the 1st appellant at the Extraordinary Executive Committee meeting on April 8, 1976, when he said: "The Association is so disorderly because there are so many cliques within the Executive Committee", and again in his opening speech at the Extraordinary General Meeting on May 30, when he said: "Unfortunately within the Executive Committee, there is one Mr. Yong Su Hian who styled himself as a 'Reformist'."

To give some other instances of bias and prejudice against the respondent manifested by the 1st appellant:

At the Executive Committee meeting on February 12, 1976, according to the minutes, when the respondent raised the question of the 1st appellant's private secretary's participation in the management of the secretariat but did not name this person, the 1st appellant said that the Association does not allow non-gentlemen coming in to do mischief.

At the Executive Committee meeting on April 5, 1976, according to the minutes and the report in the Nanyang Siang Pau of the proceedings, at the outset of the discussion on the additional agenda, the 1st appellant accused the respondent of showing no respect for the Association, virtually accepting and suggesting the allegation in the additional agenda as having been established and a *fait accompli*. While the matter of the additional agenda was in the course of discussion the 1st appellant said: "If a person kills another person, he will definitely not admit that he has killed him. No one will simply voluntarily admit it. We must calmly reason over it. One cannot deny after having done it. The point is one cannot do things at random" — to all intents prejudging the issue even before proper discussion and determination of the truth of the allegation in the additional agenda. Again in the course of the discussion he said that he had three things proving that the respondent had privately printed documents of the Association, without referring to the cash bill produced by the respondent from Kuang Ming Press, and then invited the Committee to discuss action under rule 29. A little later he said, again in the course of the discussion: "Now two hours have been spent and each side gave his own reasons. Now let us vote and do not waste time." When the Association's legal adviser advised against the respondent's expulsion, the 1st appellant said: "The highest Executive Committee has the right to vote. No need to follow the opinion of the legal adviser." When some members of the committee indicated that they had to first get a mandate in the matter as they were representatives of associations and guilds and that the matter should be looked into clearly and after careful consideration, the 1st appellant said: "Must vote", and according to the Nanyang Siang Pau report of these proceedings, the 1st appellant insisted that a vote be taken. And as I have already pointed out earlier, as soon as the item in the additional agenda had purportedly been passed as a proposal, the 1st appellant deemed it that the respondent had actually infringed rule 29 and then handed over the matter to the Executive Committee which immediately proceeded to vote for the expulsion of the respondent under that rule and a vote was taken in a negative way with the 1st appellant asking whether anyone objected thereto.

At the Extraordinary Executive Committee meeting on April 8, 1976, according to the minutes, the 1st appellant said: "This person, Yong Su Hian, is a mischief maker. What did he reform? In the past during the office of Datuk Ng Song Choon, he always caused trouble and as a result there was so much work that the Association wanted to do but could not be done. Why should one be so sorry on the expulsion of this man?".

At the Executive Committee meeting on May 12, 1976, according to the minutes, when the second letter from Kuang Ming Press retracting their first letter implicating the respondent was read out by the Executive Secretary, the 1st appellant said: "Kuang Ming Press & Co. Sdn. Bhd.'s two letters contradict each other. It is very illegal" — virtually refusing to take cognisance of the second letter, and, a little later he said the respondent had caused disturbance in the Association, and went on to add: "Since I became Chairman six months ago, I saw that Yong Su Hian had done nothing. He only quarrelled in meetings. Can we work with this man? We ceased his member-

ship for the sake of serving the Chinese." And yet again later in the meeting when the matter of referring the respondent's expulsion to a general meeting was being discussed, he said: "Yong Su Hian's secret weapon is in my hands. If it goes to court, I have confidence. I ask all Executive Committee members not to worry. In the court I shall have the chance to clarify. If a general meeting is not convened many people will say I am dictatorial."

I have already referred to the 1st appellant's opening address at the Extraordinary General Meeting on May 30, 1976, and in it he said, *inter alia*, that the respondent had caused the Association a lot of chaos and went on to add: "The high esteem and dignity of the Association have suffered and in the eyes of the public, the Association is a place of mess. This sort of appearance really saddens the heart very much." He further said: "From the various indications as aforesaid (referring only to the evidence against the respondent and not that exculpating him) it is sufficient to prove that Yong Su Hian did in fact privately print the membership application forms of the Association", and went on to accuse the respondent of falsehood and deception at the Executive Committee meeting on April 5. And yet again later in his speech he said: "Anyway, ceasing the membership of Yong Su Hian was according to various proof and was decided upon for the sake of alertness .... We absolutely must not forsake our holy duty and disregard the benefits and welfare of the Chinese in Perak just because one or two persons who wish to achieve his intention." In the Nanyang Siang Pau report of the Extraordinary General Meeting it appears that at one stage in the proceedings the 1st appellant stood up and said that he was innocent, that he took up the Chairman's post not because he wanted to but because the Executive Committee and the four provincial associations invited him, and that he then went on to stress that the Executive Committee had expelled the respondent rightly and legally, that he had proof that the respondent discredited the Executive Committee and that he was of the opinion that the respondent offered no contribution to the Association. And according to the minutes of the Extraordinary General Meeting, the 1st appellant, who as I pointed out earlier had ignored a request for the Association's legal advisers or responsible lawyers to attend and advise the meeting on the legal aspects of the matter, said in the course of the proceedings: "I have been legally advised that the termination of Yong Su Hian's membership is lawful."

It would therefore appear to me to be clear from the evidence, both oral and documentary, that the 1st appellant in the circumstances manifested considerable likelihood of bias and prejudice against the respondent, and he should not therefore have presided at the meeting of the Executive Committee on April 5 and the Extraordinary General Meeting on May 30, 1976, when the allegation against the respondent was discussed, and I would refer in this connection to the observations of Lord Atkinson in delivering the judgment of their Lordships of the Privy Council in *Thompson* v. *New South Wales Branch of the British Medical Association*[21] (at p. 780) when he said that although there was no legal evidence of sufficient bias on the part of Dr. Davidson, it was because of the possibility of the existence of a suspicion of prejudice that their Lordships could not refrain from expressing their great regret that Dr. Davidson did not disconnect himself with every branch of, and step in, the proceedings touching the alleged misconduct or consequent expulsion of the appellant in that case.

Maclean v. *Workers' Union*[6] would appear to be an authority for the proposition that mere personal prejudice is not sufficient to constitute bias. Maugham J., referred in that case to the quaint phrase of Blackburn J., in *R.* v. *Rand*[22] (at p. 232) describing bias as a "challenge to the favour", and said (at p. 625): "Whatever may be the precise meaning of this phrase, I think that mere personal prejudice, even resulting from a previous dispute or altercation, is not comprehended within the term." That case exhibited a "hands off" approach to domestic tribunals which is not the present trend of authority (*Hiles* v. *Amalgamated Society of Woodworkers;*[23] *Taylor* v. *National Union of Seamen*[24]), and in any event, prejudice in the context of a domestic tribunal is likely to produce a progression into the situation of adjudicators sitting as prosecutors or to demonstrated bias during the hearing, both of which are evident in the matter before us.

In *Taylor* v. *National Union of Seamen,*[24] the general secretary of the union had dismissed the plaintiff from employment with the union. The plaintiff appealed to the executive council, and at the hearing the general secretary presided and after the plaintiff's withdrawal he made a statement in which he introduced prejudicial and irrelevant matters. It was held that the general secretary had acted as accuser and adjudicator and an appropriate declaration was made. In *Dickason* v. *Edwards,*[25] the High Court of Australia held the presence of the complainant at the hearing at which he formally sat as president but in which he took no active part invalidated the proceedings. This attitude of the Australian High Court seems to be confirmed by its decision in *Stollery* v. *The Greyhound Racing Control Board*[26] that the presence of an accuser during the deliberations of the Board on a disciplinary matter was in breach of the bias rule.

Also pertinent in this respect is the recent decision in *Roebuck* v. *National Union of Mineworkers (Yorkshire Area)*[27] in which it was held *inter alia* that there was nothing in the union rules which made it essential for the president to sit as chairman of the area executive committee or of the area council if for some other reason he were disqualified from so doing; that the ordinary rules of natural justice applied and that the president, having in his complaint expressed his views as to the guilt and culpability of those to be brought before the disciplinary tribunal, was disqualified from adjudicating upon the two cases on the grounds that he had acted as prosecutor and that he was a person who was biased; that justice had neither been done nor been seen to be done, and the decisions of the executive committee and the area council were therefore void.

And in a sequel to that case, Templeman J., in the even more recent decision in *Roebuck* v. *National*

Union of Mineworkers (Yorkshire Area) (No. 2),[28] giving judgment for the plaintiffs in that case on their motions for judgment to be entered against the union on the basis of the admissions in the defence, held that the president, who had been the plaintiff in a libel action successfully brought against a newspaper by him acting on behalf of the union and had suffered a prolonged and difficult cross-examination as a result of the evidence given by the two members for the newspaper, must inevitably have appeared biased when acting as chairman at the various meetings, and the likelihood of such bias, conscious or unconscious, was probable; that the possible bias of the chairman meant that the area council and the area executive committee had not been properly constituted and, accordingly, it was no defence for the union to show that in fact justice had been done and the president had not influenced the proceedings. This case bears considerable similarity to the appeal before us as the president's report which he read aloud to the area council and which Templeman J., described as 'more like judgment before trial' finds a parallel in the several utterances of the 1st appellant I have adverted to and in particular at the Executive Committee meeting on April 5 and in his opening address at the Extraordinary General Meeting on May 30, 1976.

I am accordingly of the view that there was not only reasonable suspicion but also real likelihood of bias on the part of the 1st appellant in this case (*Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon*[29] in which both tests were considered), and his presiding at the Executive Committee meeting on April 5 and the Extraordinary General Meeting on May 30, 1976, in relation to the matter of the respondent's expulsion is yet another factor vitiating the proceedings.

CONCLUSION.

It is in the circumstances not even necessary to go into the conduct of the proceedings and the manner of the voting both at the Executive Committee meeting on April 5 and the Extraordinary General Meeting on May 30, 1976, save to observe that the oral and documentary evidence discloses some confusion at these meetings and a substantial dispute as to whether in fact the resolution in question and the confirmation thereof were properly carried.

There was, as I have discoursed, at both the Executive Committee meeting on April 5 and the Extraordinary General Meeting on May 30, 1976, a total disregard of the fundamentals of fair play in action as to notice, hearing, due inquiry and also bias, rendering the purported expulsion of the respondent wholly invalid. Any attempt to look for the requisite fundamentals in this case would be reminiscent of a search by a sightless septuagenarian for a black cat in a feline sanctuary in Erebus, and I would express the hope that this judgment will have provided a stick or, better still, a guide-dog to obviate a recurrence of the events under consideration in any similar situation.

In the circumstances I would dismiss the appeal with costs.

CROSS-APPEAL.

The respondent in turn cross-appeals for an award of general as well as exemplary damages but his claim for the latter was promptly abandoned when I pointed out that his case does not seem to come within any of the three categories laid down by Lord Devlin in *Rookes* v. *Barnard*[30] (at pp. 1226-1227) which was approved and applied in *Broome* v. *Cassell & Co. Ltd.*[31] to justify any such award.

The respondent's cause of action in respect of his claim for damages is wrongful expulsion and not defamation. I do not feel that we should interfere with the learned judge's decision not to award damages for the reasons given by him, and although his expulsion was invalid I do not think the respondent has suffered such damage as to merit a reversal of that decision. The learned judge says in his judgment that to the ordinary member of the Association the respondent has become a hero as a result of his expulsion, and I would only add that it would appear to me that the action taken against him and culminating in these proceedings has made him more of a martyr in the cause of standing up to authority and thereby exciting more sympathy and engendering more support generally than he perhaps would otherwise have had rather than resulting in the alienation of these sentiments.

The respondent was purportedly expelled on April 5, 1976, by the decision of the Executive Committee which was again purportedly confirmed on May 30, 1976, by the members in Extraordinary General Meeting. He then filed the writ in these proceedings on July 20, 1976, and 6 days later on July 26 obtained an interim injunction *ex parte* restoring his membership rights pending the trial and determination of the action instituted. His expulsion therefore took effect for only some three and a half months or so and I do not think in the circumstances there is sufficient justification for interfering with the learned judge's decision on the question of damages.

I would therefore dismiss the cross-appeal.

Syed Othman F.J.: I would also dismiss this appeal. Apart from the reasons given by the learned trial judge, I would like to touch on one thing. On the evidence adduced by the parties the tribunal which sat to determine the allegation against the respondent, consisted of elements who cannot be said to be unbiased. There were in the tribunal not only the accuser, but also, all the indications are, persons who could be witnesses for or against the respondent. The accuser, i.e. the first appellant, was in the chair of the tribunal. Reference is made to *MacLean* v. *The Workers Union*[6] as showing that the first appellant could not be treated as biased. But in that case there was evidence to show that the tribunal acted in accordance with its own rules. Here, there were no rules relating to the tribunal. In the portions of the judgment referred to, Maugham J. was mainly dealing with the historical aspects of judicial or quasi-judicial proceedings. They should not be taken as authority for any proposition of law which would be acceptable these days. The main point to bear in mind regarding this case is that at p. 625, Maugham J. said " 'the

principles of natural justice' can only mean the principles of fair play". In the present case, fair play can hardly be said to exist, when the main participant sat in the chair of the panel, and when apparently persons who could be witnesses also took part in arriving at a decision.

As to the cross-appeal by the respondent for damages, the circumstances of the case, as found by the learned trial judge, did not show that blame could not be attached to the respondent for the whole affair. By his own admission before the trial court, the respondent had all along been challenging the first appellant in his actions as chairman of the Association. I agree with the learned trial judge that appellants acted in good faith. In any case, it was not shown that the respondent suffered any loss in proprietary interest or means of livelihood as a result of being deprived of the Association's membership. Nor was it shown that his reputation was in any way affected. I would also dismiss the cross-appeal.

Chang Min Tat F.J.: On reflection, it must be apparent to all that this case has come before the High Court and before us only because the proper advice of legal advisers in matters concerning the relation between the parties was ignored.

I agree for the reasons given by Datuk Eusoffe Abdoolcader J. that the appeal be dismissed with costs.

As for the cross-appeal, in all the circumstances of the case, I would dismiss it but would make no order as to costs.

The order of the court is that the appeal be dismissed with costs and that the cross-appeal is also dismissed but there will be no order as to the costs of the cross-appeal.

Order accordingly.

Solicitors: *Cheang Lee & Ong; Chin Fook Yen & Co.*

LEE NYAN CHOI v. VOON NOON

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat and Syed Othman F.JJ.) November 22, 1978]

[Kuching — Federal Court Civil Appeal No. 34 of 1978]

Practice and Procedure — Application to have defence struck out — Triable issues — Power to dismiss action summarily to be resorted to only in plain and obvious cases — R.S.C. 1957, O. 19 rr. 19 & 27, O. 21 r. 1 and O. 25 r. 4.

In this case the respondent had applied to have the defence of the appellant struck out. The learned Judge at first made an order for the payment into court of the amount in dispute, but subsequently on hearing argument in open court he held he had no jurisdiction to grant conditional leave to defend. However, he held that the first six paragraphs of the defence were frivolous and vexatious and they were unnecessary or tended to prejudice, embarrass or delay the fair trial of the action. Consequently he ordered them to be struck out and entered judgment against the appellant for the sum of $37,960.11. The appellant appealed.

Held: as there were triable issues in this case the proper course would be for the issues to be tried in the usual manner in open court. The power to dismiss an action summarily without permitting a party to proceed to trial should only be resorted to in plain and obvious cases. The present case was not one of those plain and obvious cases.

Case referred to:-

(1) *Alliance (Malaya) Engineering Sdn. Bhd.* v. *Sam Development Sdn. Bhd.* [1974] 2 M.L.J. 94.

HIGH COURT.

Chan Kay Heng for the plaintiff.

J.C. Fong for the defendant.

Seah J.: On November 26, 1977 I ruled that unless the defendant paid into court the sum of $37,960.11 within 15 days from date thereof, the defence relating to this claim should be struck out and the plaintiff be at liberty to enter judgment against the sum claimed. On the application of the defendant, made within 4 days from the date of the order, I adjourned the matter into open court for further argument. The argument was heard on December 5, 1975 where both counsel for the plaintiff and the defendant had put in written submissions. At the end I reserved judgment.

It was contended by counsel for the defendant that the court was wrong to impose a condition about payment into court of the sum of $37,960.11 within a time-limit since the application was made under Order 19 rule 19 and rule 27, Order 21 rule 1 and Order 25 rule 4 of the High Court in Borneo Rules 1963. It was further argued under these Orders or rules, that the jurisdiction of the court is limited to striking out pleadings and it may order the action to be stayed or dismissed or judgment to be entered accordingly, as may be just.

Counsel for the defendant submitted that the power of the court to impose terms when leave to defend was given could only be invoked if the application was made under Order 14 (see Order 14 rule 4 and rule 6). Reliance was placed on the Federal Court case of *Alliance (Malaya) Engineering Co., Sdn. Bhd.* v. *San Development Sdn. Bhd.*[1]

For the plaintiff it was contended that the application for leave to enter judgment against the defendant was made under Order 14 as well as under Order 19 rule 19 and rule 27, Order 21 rule 1 and Order 25 rule 4, and that the court was justified to impose the term in granting conditional leave to defend on that term.

I have re-examined the summons-in-chambers dated September 14, 1977 and the notes of proceedings. I have been unable to find any indication that reliance was also placed on Order 14 of the Rules of the High Court in Borneo 1963.

Under the circumstances, I agree with the submission of counsel for the defendant that in an application under Order 19 rule 19 and rule 27, Order 21 rule 1 and Order 25 rule 4 the court has no jurisdiction to grant conditional leave to defend. Under these said Orders or rules of the High Court in Borneo, the jurisdiction of the court is confined to either striking out the pleadings and giving leave to enter judgment accordingly or dismissing the application. I agree that only in applications under Order 14 for summary judgment conditions may be imposed if the court is not satisfied with the *bona fide* of the defence, albeit the defence does raise triable issues.

I have expunged from my ruling the following sentences starting from: